

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**May 25, 2023**

**FOR THE TENTH CIRCUIT**

**Christopher M. Wolpert**  
**Clerk of Court**

LANCEY DARNELL RAY,

Plaintiff - Appellant,

v.

TERRY QUISENBERRY; ANDREW  
SIBLY; INAS YACOUB; FRED  
COLSON SMITH, JR.; EDDIE VALDEZ;  
JORDAN L. CABELKA; GERALD F.  
NEUWIRTH; KYLE CABELKA; ERIC  
PFEIFER; LLOYD J. AUSTIN, III,

Defendants - Appellees.

No. 23-6038  
(D.C. No. 5:22-CV-00823-D)  
(W.D. Okla.)

**ORDER AND JUDGMENT\***

Before **McHUGH, MURPHY, and CARSON**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Lancey Ray appeals from an order of the district court dismissing Ray’s 42 U.S.C. § 1983 complaint. In his complaint, Ray brought claims against numerous

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

state officials, as well as Lloyd Austin, III, in his official capacity as the Secretary of Defense.<sup>1</sup> The matter was referred to a magistrate judge for initial proceedings pursuant to 28 U.S.C. § 636(b)(1)(B). In a thorough report and recommendation, the magistrate judge recommended that the district court dismiss some of the many claims in Ray’s complaint without prejudice (those claims unsupported by allegations of wrongdoing and those barred by *Heck v. Humphrey*, 512 U.S. 477 (1994)), and some with prejudice (those barred by absolute judicial immunity and those untimely under Oklahoma’s borrowed statute of limitations). Ray filed timely objections to the magistrate judge’s report and recommendation. Upon de novo review, 28 U.S.C. § 636(b)(1)(B)-(C), the district court adopted the report and recommendation. Ray appeals.

This court has reviewed de novo Ray’s appellate filings, the magistrate judge’s report and recommendation, the district court’s order, and the entire record on appeal. That review makes clear the judgment entered by the district court is not infected with error. Accordingly, exercising jurisdiction pursuant to 28 U.S.C. § 1291, this

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<sup>1</sup> The district court dismissed Ray’s complaint as it relates to Secretary Austin on the ground the complaint failed to allege any wrongdoing of any kind on the part of Secretary Austin. Furthermore, the district court concluded Ray’s belated assertion that he sought “prospective relief to prevent future violations,” which was raised for the first time in Ray’s objections to the magistrate judge’s report and recommendation, was waived. All this being the case, it is also patently clear Secretary Lloyd, a federal official, is not subject to suit under § 1983. *See Big Cats of Serenity Springs, Inc. v. Rhodes*, 843 F.3d 853 (10th Cir. 2016) (holding federal officials are “facially exempt” from the provisions of § 1983 and noting the narrow exception to that rule for active conspiracies in which federal and state officials share a “common unconstitutional goal”).

court **AFFIRMS** the judgment of the United States District Court for the Western District of Oklahoma for substantially those reasons set out in the magistrate judge’s report and recommendation, dated January 24, 2023, and the district court order, dated March 10, 2023. Furthermore, because Ray has not advanced on appeal “a reasoned, nonfrivolous argument on the law and facts in support of the issues raised,” this court **DENIES** his request to proceed in forma pauperis and orders him to immediately remit the entirety of the appellate filing fee. *DeBardleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991).

Entered for the Court

Michael R. Murphy  
Circuit Judge